IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTYFIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1578 of 2005

Between:

Raghava Educational Society (formerly SVS Junior

College), Kusumanchi, Khammam District,

Rep. by its Secretary & Correspondent Sri K.MadhusudhanRao.

..... PETITIONER

AND

1. Government of Andhra Pradesh, rep. by the Secretary,

   Higher Education Department, Hyderabad.

2. The Board of Intermediate Education, Government

   of Andhra Pradesh, Hyderabad, rep. by its Secretary.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ order or direction more particularly one in the nature of Writ of Mandamus, declaring the inaction in implementing the G.O.Rt.No.843, dated 3-11-2004 of the 1st respondent by the 2nd respondent is ultra vires the powers of the second respondent, bad in law, against the principles of natural justice and violation of Article 19 of the Constitution of India and be pleased to pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR. Vilas V.Afzul Purkar

Counsel for the Respondents : Mr. S.S. Prasad,

GP FOR Higher Education

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.1578 OF 2005

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ORDER :

The petitioner society was granted permission to start an Unaided Private Junior College for Girls in the academic year 2000-01. Accordingly, the petitioner started the Junior College in the name of Geethanjali Junior College for Girls at Mancherial, Adilabad District. However, since the said College has become unviable, the petitioner made an application in the prescribed proforma requesting permission for shifting the College from Mancherial to Kusumanchi of Khammam District in the name of S.V.S. Junior College and also for conversion of the College into Co-education College. In pursuance thereof, the 1st respondent herein vide order under G.O.Rt.No.182, Higher Education (I.E.II) Department, dated 10-03-2004 issued the requisite permission which runs as under :

"In the circumstances stated by the Secretary, Board of Intermediate Education in his letter 2nd read above, the Government after careful examination of the matter hereby accord permission to the Management of Raghava Educational Society to shift Geetanjali Junior College Premises for Girls from Mudigonda Village to Kusumanchi Village, Khammam District and Conversion of Geeetanjali Junior College for Girls to Co-education in relaxation of rule 14(3) and (5) of the rules issued in G.O.Ms.No.29, Education (Rules) Department, dated 5-2-1987, duly permitting to change the name of Geetanjali Junior College for Girls as S.V.S. Junior College subject to fulfillment of other terms and conditions stipulated by the Government / Board of Intermediate Education from time to time. This orders shall come into force with effect from academic year 2004-05."

In the said order, though in the subject cited the place of existing college was correctly mentioned as "Mancherial", in the body of the G.O., it was stated that permission was accorded for shifting from "Mudigonda" village instead of "Mancherial". It appears that on the basis of the said error crept in the body of the G.O., subsequently the 1st respondent by letter dated 1-9-2004 informed the 2nd respondent that the proposal of shifting of Geetanjali Junior College for Girls from Mancherial to Kusumanchi village was rejected and therefore requesting the Board to take necessary action. Aggrieved by the same, the petitioner filed W.P.No.16533 of 2004 with a prayer to set aside the said proceedings dated 1-9-2004 and consequently to direct the Board of Intermediate Education to implement G.O.Rt..No.182, dated 10-03-2004. This Court disposed of the said writ petition by order dated 17-09-2004 directing the 1st respondent to correct the typographical mistake that was crept in the body of G.O.Rt.No.182, dated 10-03-2004 by incorporating "Mancherial" in the place of "Mudigonda" within a period of three days and to issue the modified G.O. and communicate the same to the petitioner. It is not in dispute that in compliance with the said order, the 1st respondent issued G.O.Rt.No.843, Higher Education (IE.II) Department, dated 3-11-2004 which runs as under :

"After careful examination in partial modification of the orders issued in G.O.Rt.No.182, dated 10-03-2004 the Government hereby ordered for shifting of Geetanjali Junior College for Girls from Mancherial, Adilabad District to Kusumanchi, Khammam District instead of from

Mudigonda village to Kusumanchi village, Khammam District. The Secretary, Board of Intermediate Education is requested to take necessary follow-up action."

The petitioner states that in pursuance of the said G.O.Rt.No.843, dated 3-11-2004, a representation dated 5-11-2004 has been made to the 2nd respondent requesting to implement G.O.Rt.No.843 at an early date. However, the 2nd respondent by letter dated 2-12-2004 informed the petitioner that as per G.O.Ms.No.29, Education (Rules) Department, dated 5-2-1987 it is necessary to fulfill the condition of providing a building with plinth area of 8,000 sq.ft. However, as per the feasibility report received from the Regional Inspection Officer, Warangal, the petitioner has not fulfilled the said condition and therefore the G.Os. can be implemented only after all the requirements are satisfied. In the meanwhile, the petitioner has deposited the required corpus fund and also complied with the objection taken by the 2nd respondent with regard to providing a building with more than 8,000 sq.ft. plinth area and informed the said fact to the 2nd respondent by letter dated 27-12-2004. However, the 2nd respondent failed to implement G.O.Rt.No.843, dated 3-11-2004. Hence, this writ petition seeking a declaration that the inaction on the part of the 2nd respondent in implementing G.O.Rt.No.843, dated 3-11-2004 is arbitrary and illegal.

The petitioner states that in pursuance of G.O.Rt.No.182, dated 10-03-2004 the petitioner has provisionally admitted about 132 students under the legitimate expectation that G.O.Rt.No.182 would be implemented and it had made all arrangements by appointing the faculty, and by providing the infrastructural facilities. It is pleaded that the non-implementation of the G.Os. by the 2nd respondent would jeopardise the career of 132 students apart from resulting heavy loss of reputation in addition to monetary loss to the petitioner.

In the counter-affidavit filed on behalf of the 2nd respondent, it is stated that the petitioner is entitled to shift the college on the basis of G.O.Rt.No.182 as modified by G.O.Rt.No.843, dated 3-11-2004 only after satisfying the conditions prescribed in the G.O. and the Board can permit shifting and can grant affiliation only on such

fulfillment of the conditions. It is also stated that a feasibility report was called for from the Regional Inspection Officer, Warangal after inspection as to feasibility of shifting the college to Kusumanchi village. The Regional Inspection Officer by letter dated 16-08-2004 submitted a report stating that the management has provided only 4,194 sq.ft. of plinth area instead of required plinth area of 8,000 sq.ft. On the basis of the said report, the management was informed that G.O.Rt.No.843 can be implemented only after fulfillment of all the conditions. In the meanwhile, the Government issued order dated 13-12-2004 directing to issue a show-cause notice to the petitioner for their unauthorised shifting. Accordingly, a notice was issued on 4-2-2005 to the show-cause as to why action should not be taken for unauthorised shifting from Mancherial to Kusumanchi and also changing the college name as "S.V.S. Junior College" and conversion of the Girls College into co-education. Since the petitioner did not fulfill all the necessary conditions required for implementation of the G.Os., the action of the petitioner in admitting the students at Kusumanchi village without implementation of the G.Os. by the 2nd respondent is highly irregular and therefore no relief can be granted as prayed for.

I have heard the learned Counsel for the petitioner as well as the learned Standing Counsel appearing for the Board of Intermediate Education.

It is to be noted that in exercise of the powers conferred by Sections 20 and 21 read with Section 99 of The A.P. Education Act, 1982 and in supercession of all corresponding rules on the subjects, the rules were made under G.O.Ms.No.29, Education (Rules) Department, dated 5-2-1987 which are called as A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for short, 'the Rules'). The said Rules are made applicable to all the educational institutions both Government and Private imparting the categories of education specified in Rule-1 (2) of the said Rules, which include the Junior Colleges. As per Rule-9 (1), the Board of Intermediate Education is the competent authority for granting or withdrawing of the recognition or affiliation for the institutions. Sub-rule (2) of Rule 9 specifies the conditions to be satisfied for according recognition / affiliation by the competent authority. As per sub-Rule (3), the Educational Agency of the private institution in respect of which the competent authority have accorded permission is permitted to admit students and to appoint

staff immediately after the receipt of the orders of permission to open their institution and after fulfilling the conditions stipulated for grant of recognition / affiliation, the Educational Agency shall make an application for approval of the appointments made and for grant of recognition / affiliation to the institutions. Such application shall be made within a period of three months from the date of receipt of the order of the permission. It is also relevant to note that clause (C) of Sub-Rule (3) of Rule 9 makes it clear that unless the students are admitted and staff are appointed and other conditions are satisfied, the competent authority shall not accord approval to the staff appointed and accord recognition / affiliation to the private institution and consequently the students shall not be allowed to appear for the public examinations.

In the case on hand, admittedly the petitioner was permitted to shift the Junior College from Mancherial to Kusumanchi as per the orders of the 1st respondent dated 10-03-2004 as modified by G.O.Rt.No.843, dated 3-11-2004. Under the said orders, the petitioner was also permitted to change the name of the College as S.V.S. Junior College so as to run a co-education college instead of college for girls. The petitioner was also granted relaxation of Rule 14(3) and (5) of the Rules under which there was a prohibition from shifting an institution which was established to meet the educational needs of a particular locality to another locality and also for conversion of a womans' institution into a co-education or boys' institution or vice-versa. By virtue of the said orders, undoubtedly the petitioner is entitled to establish the Junior College at Kusumanchi and the action of the petitioner cannot be said to be unauthorised.

The case of the petitioner is that since in G.O.Rt.No.182, dated 10-03-2004 it was mentioned that it shall come into force with effect from the academic year 2004-05, the petitioner is entitled to take the admissions for the said academic year and accordingly the petitioner having shifted the college to Kusumanchi has admitted 132 students, of course it is stated that they were admitted provisionally.

The only objection raised by the 2nd respondent is that the 1st respondent while granting permission has made it clear that such permission is subject to fulfillment of the other terms & conditions stipulated by the Government / Board of Intermediate Education from time to time and therefore the petitioner ought not to have admitted the students till the affiliation is granted by the Board.

Having regard to the provision of Rule 9(3) of the Rules, I am unable to find fault with the action of the petitioner in having admitted the students for the academic year 2004-05. The contention of the 2nd respondent is that the petitioner could not have admitted any students without fulfilling the conditions runs contrary to Rule 9(3) of the Rules. On the basis of the material on record, I am of the view that the petitioner has rightly shifted the institution to Kusumanchi village and the admission of the students is also permissible in view of Rule 9(3) of the Rules. Hence, the only steps required to be taken by the Board is to verify whether the conditions specified for granting affiliation are satisfied by the petitioner and in case the petitioner has fulfilled all the requirements to the satisfaction of the 2nd respondent, it is bound to grant the affiliation. Obviously, the show-cause notice dated 4-2-2005 was erroneously issued basing on the order dated 1-9-2004 which was already considered by this Court in W.P.No.16533 of 2004 and ordered modification of G.O.Rt.No.182, dated 10-03-2004. As a matter of fact, such modified order has already been issued vide G.O.Rt.No.843, dated 3-11-2004 which appears to have missed the attention of the 1st respondent while issuing the proceedings dated 13-12-2004.

For the aforesaid reasons, I am of the view that the 2nd respondent is bound to take further steps as prescribed under the Rules on the basis of G.O.Rt.No.843, dated 3-11-2004 for the academic year 2004-05.

Accordingly, the Writ Petition is disposed of with a direction to the 2nd respondent to take the necessary further steps in accordance with law forthwith on the basis of G.O.Rt.No.843, dated 3-11-2004. It is made clear that in case there is any objection for granting the affiliation / recognition and to allow the students that were admitted into the petitioner institution to appear for the examinations, the same

shall be intimated to the petitioner within one week from the date of receipt of this order.

The Writ Petition is accordingly disposed of. No costs.

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25th February, 2005.

Note:-CC by tomorrow.

(B/O)

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To

1. The Secretary, Government of Andhra Pradesh, Higher Education Department, Hyderabad.
2. The Secretary, Board of Intermediate Education, Government

of Andhra Pradesh, Hyderabad.

3. Two CCs to G.P. for Higher Education, High Court of AP Bldgs, Hyderabad. (OUT).
4. Two CD copies.